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OPEN MEETING ITEM



BRIAN C. MCNEIL
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ARIZONA CORPORATION COMMISSION

2003 SEP 16 A 10: 20

DATE: September 16, 2003

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NOS: W-03388A-03-0150 and SW-03389A-03-0150

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Philip J. Dion III. The recommendation has been filed in the form of an Opinion and Order on:

SEVEN CANYONS WATER COMPANY and SEVEN CANYONS WATER
TREATMENT COMPANY
(CC&N EXTENSION)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

SEPTEMBER 25, 2003

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Open Meeting to be held on:

SEPTEMBER 30 and OCTOBER 1, 2003

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

SEP 16 2003

BRIAN C. MCNEIL
EXECUTIVE SECRETARY

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman
JIM IRVIN
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON

IN THE MATTER OF THE APPLICATION OF SEVEN CANYONS WATER COMPANY FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE WATER SERVICE.

DOCKET NO. W-03388A-03-0150

IN THE MATTER OF THE APPLICATION OF SEVEN CANYONS WATER TREATMENT COMPANY FOR AN EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE SEWER SERVICE.

DOCKET NO. SW-03389A-03-0150

DECISION NO. _____

OPINION AND ORDER

DATE OF HEARING: August 20, 2003
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Philip J. Dion III
APPEARANCES: Mr. Patrick J. Black, FENNEMORE CRAIG, on behalf of Seven Canyons Water Company and Seven Canyons Water Treatment Company; and
Mr. David Ronald, Staff Attorney, Legal Division, on behalf of the Utilities Division of the Arizona Corporation Commission.

BY THE COMMISSION:

On March 7, 2003, Seven Canyons Water Company ("Canyons Water") and Seven Canyons Water Treatment Company ("Canyons Wastewater") (jointly "Applicants" or "Companies") filed with the Arizona Corporation Commission ("Commission") applications for approval to extend their Certificates of Convenience and Necessity ("Certificates") to provide water and wastewater service to an additional area in Yavapai County, Arizona.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the

1 Commission finds, concludes and orders that:

2 **FINDINGS OF FACT**

3 1. Canyons Water and Canyons Wastewater are Arizona corporations that provide water
4 and wastewater utility services to one commercial customer, a golf course¹, and some customers that
5 purchase water at a meter and haul it away, in Sedona, Yavapai County, Arizona. Canyons Water
6 and Canyons Wastewater were granted their Certificates in Decision No. 60718 (March 23, 1998).

7 2. Canyons Water and Canyons Wastewater are owned by Sedona Development
8 Partners, LLC ("Sedona Partners").

9 3. In Decision No. 60718, the Companies were ordered to file with the Commission the
10 appropriate tariffs with the authorized rates and charges on or before March 31, 1998. The
11 Commission further ordered that in the event that the Companies did not timely file the required
12 tariffs, then the CC&N application(s) shall be deemed denied without further action by the
13 Commission.

14 4. On March 7, 2003, the Companies filed applications for an extension of their existing
15 Certificates in Yavapai County, Arizona to provide water and wastewater service to a 38-acre piece
16 of property that is not contiguous to their current certificated area.² The property is more accurately
17 described in Exhibit A, attached hereto and included herein by reference.

18 5. On June 5, 2003, Staff informed the Companies that their applications were sufficient.
19 Subsequently, Staff discovered that the Companies were not in compliance with Decision No. 60718.
20 Specifically, Staff informed the Companies that they had not filed the tariffs as ordered in the
21 Decision.

22 6. On June 12, 2003, a Procedural Order was issued setting the matter for hearing on
23 August 20, 2003.

24 7. On July 14, 2003, the Companies filed the tariffs as required in Decision No. 60718.
25 The Companies also requested a retroactive extension of time to comply with the Decision and
26 reinstatement of their CC&Ns.

27 ¹ The golf course is owned by Sedona Development Partners, LLC.

28 ² United States Forest Service lands are between the existing service area and the proposed service area. On April 7,
2003, the United States Department of Agriculture Forest Service issued the necessary easement to the Companies.

1 8. On July 17, 2003, the Companies filed an Affidavit of Mailing indicating that all
2 property owners in the proposed extension area were notified of the application and hearing date.

3 9. No intervention requests or objections to the application were filed.

4 10. On July 23, 2003, Staff filed its Staff Report in this matter recommending approval of
5 the application subject to some conditions. Staff recommended that the Commission grant Canyons
6 Water and Canyons Wastewater's request for a retroactive extension of time to comply with Decision
7 No. 60718 and reinstate their CC&Ns.

8 11. Staff recommended that the Commission approve Canyons Water's application to
9 extend its CC&N subject to the following conditions: that Canyons Water charge its existing rates
10 and charges in the proposed extension area, that it file a copy of the Municipal Franchise for the
11 extension area and that it file with the Commission a copy of the developer's Letter of Adequate
12 Water Supply. Staff also recommended that the Commission approve Canyons Water's proposed
13 Curtailment Tariff filed in this Application. Staff further recommended that the Commission's
14 Decision granting this extension to Canyon Water's CC&N be considered null and void without
15 further Order from the Commission should Canyon Water fail to file a copy of the Municipal
16 Franchise or the Letter of Adequate Water Supply within 365 days of the Decision in this matter.

17 12. Staff recommended that the Commission should approve Canyons Wastewater's
18 application to extend its CC&N subject to the following conditions: that Canyons Wastewater charge
19 its existing rates and charges in the proposed extension area and that it obtain and file a copy of the
20 Municipal Franchise for the extension area. Staff further recommended that the Commission's
21 Decision granting this extension to Canyons Wastewater's CC&N be considered null and void
22 without further Order from the Commission should Canyons Wastewater fail to file the Municipal
23 Franchise within 365 days of any Decision in this matter.

24 13. On August 20, 2003, the hearing in this matter was held as scheduled. Dennis Cain,
25 Vice-President of Canyons Water and Canyons Wastewater, testified on behalf of the Companies and
26 Jim Fisher testified on behalf of Staff.

27 14. Mr. Cain testified that Canyons Water and Canyons Wastewater agree to abide by the
28 recommendations made by Staff in the Staff Report.

1 15. Canyons Water has predicted an additional 20 customers in the requested CC&N
2 extension area by the end of five years.

3 16. Canyons Water currently owns one well with a production capacity of 94 gal/min
4 (“GPM”), a 200,000 gallon storage tank, booster pumps, pressure tank and a distribution system
5 serving one customer. Additionally, Sedona Partners is in the process of installing two additional
6 wells that may be contributed to Canyons Water in the future if required to meet Arizona Department
7 of Environmental Quality (“ADEQ”) requirements to support growth and water demand in the area.
8 The addition of those two wells would bring total well production of the system to 450 GPM.

9 17. In 2001, ADEQ issued an on-site wastewater disposal permit to Canyons Wastewater;
10 however, the utility has not installed its proposed treatment plant. Rather than installing the ADEQ
11 approved plant, Canyons Wastewater installed a temporary on-site wastewater disposal system which
12 includes a 6,000-gallon septic tank with effluent filter and a pad disposal system. Yavapai County
13 Development Services Department issued a two-year life span permit for the temporary septic tank in
14 September, 2002. Therefore, Canyons Wastewater will have to install the approved, permanent on-
15 site 83,000 gallon per day (“GPD”) treatment plant prior to September, 2004.

16 18. Staff concludes that the existing water system has an adequate production and storage
17 capacity to serve the existing and proposed CC&N area within a conventional 5 year planning period
18 and that Canyons Water can reasonably be expected to develop additional storage and production as
19 required in the future. Further, Staff concludes that Canyons Wastewater will have an adequate
20 wastewater treatment capacity to serve the existing and proposed CC&N area within the conventional
21 5 year planning period and can reasonably be expected to develop additional capacity as required in
22 the future.

23 19. Regarding the use of effluent to irrigate the golf course, Mr. Cain testified that in the
24 future, Canyons Wastewater will develop an 83,000 GPD treatment plant. He stated that the golf
25 course alone uses 225,000 GPD on average. Mr. Cain stated that the sewer treatment volume will
26 never meet the irrigation demand of the golf course. However, he stated that once the treatment plant
27 is operating, then the Companies will use effluent to supplement the irrigation of the golf course.
28 Finally, Mr. Cain stated that the Companies had been in discussions with the City of Sedona to use its

1 effluent to irrigate the golf course. Mr. Cain stated the City of Sedona was receptive to the idea until
2 two months ago, but since that time it has withdrawn from negotiating with the Companies.

3 20. Regarding the Companies' failure to timely file their initial tariffs in compliance with
4 Decision No. 60718, Mr. Cain testified that it was some time in July or August, 2003 that the
5 Companies learned from Staff that their CC&Ns had lapsed. Mr. Cain stated that the date of the
6 lapse occurred prior to the current ownership's investment in the property, and it came as a surprise
7 to the Companies that the CC&Ns had lapsed. Mr. Cain's only explanation was that in the confusion
8 in the change of ownership, someone missed filing the paperwork they needed to file.³ He further
9 testified that the wastewater and water utilities did not begin operation until January, 2003. He stated
10 the golf course, as well as the individuals that haul water, were charged the tariff rate listed in the
11 Companies' July 14, 2003 filing.

12 21. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
13 maximum containment level ("MCL") in drinking water from 50 micrograms per liter (" $\mu\text{g}/\text{l}$ ") to 10
14 $\mu\text{g}/\text{l}$. The date for compliance with the new MCL is January 23, 2006.

15 22. The most recent lab analysis by Canyons Water indicates that the arsenic levels in the
16 ground water source supply is 8 $\mu\text{g}/\text{l}$. Based upon this arsenic level, Canyons Water is in compliance
17 with the new arsenic MCL.

18 23. There are no other public service corporations or municipality owned water or
19 wastewater systems authorized to provide or providing service in the requested area.

20 24. Canyons Water and Canyons Wastewater have adequate production and storage
21 facilities and capacity to serve its existing customers and the anticipated additional customers in the
22 extension area, and they are financially capable of constructing, operating and maintaining any
23 additional facilities necessary to provide service to the extension area.

24 25. Canyons Water has a backflow tariff on file with the Commission.

25 26. Canyons Water and Canyons Wastewater are current on their property and sales taxes.

26 27. Canyons Water is in compliance with ADEQ and is delivering water that does not

27

28 ³ In 2001, Sedona Partners purchased the property that is collectively known as Seven Canyons from the then owner and developer NZ Development in a stock sale.

1 exceed any maximum contaminant levels. In addition, according to ADEQ, AWC currently delivers
2 water that meets the water quality standards of the Safe Drinking Water Act. Further, Canyons
3 Wastewater is in total compliance with ADEQ.

4 28. Canyons Water is not within any Arizona Department of Water Resources Active
5 Management Area ("AMA") and consequently not subject to reporting and conservation rules.

6 29. Staff testified that approval of the applications would serve the public interest.

7 **CONCLUSIONS OF LAW**

8 1. Canyons Water and Canyons Wastewater are public service corporations within the
9 meaning of Article XV of the Arizona Constitution and A.R.S. § 40-281 *et seq.*

10 2. The Commission has jurisdiction over Canyons Water and Canyons Wastewater and
11 the subject matter of the applications.

12 3. Notice of the applications was provided in accordance with law.

13 4. There is a public need and necessity for water and wastewater utility services in the
14 proposed extension area.

15 5. Canyons Water and Canyons Wastewater are fit and property entities to receive an
16 extension of their water and wastewater Certificates which encompasses the area more fully
17 described in Exhibit A attached hereto.

18 6. Staff's recommendations in Findings of Fact Nos. 10, 11 and 12 are reasonable and
19 should be adopted.

20 **ORDER**

21 IT IS THEREFORE ORDERED that the application of Seven Canyons Water Company and
22 Seven Canyons Water Treatment Company for an extension of their Certificates of Convenience and
23 Necessity to include the area described in Exhibit A attached hereto and incorporated herein by
24 reference be, and is hereby granted.

25 IT IS FURTHER ORDERED that Seven Canyons Water Company's and Seven Canyons
26 Water Treatment Company requests to retroactively extend the time to comply with Decision No.
27 60718 (March 23, 1998) are granted.

28 IT IS FURTHER ORDERED that the Certificates of Convenience and Necessity of Seven

1 Canyons Water Company and Seven Canyons Wastewater Company are valid pursuant to the
2 conditions set forth in Decision No. 60718.

3 IT IS FURTHER ORDERED that Seven Canyons Water Company shall comply with Staff's
4 recommendations as set forth in Finding of Fact No. 11.

5 IT IS FURTHER ORDERED that Seven Canyons Water Treatment Company shall comply
6 with Staff's recommendations as set forth in Finding of Fact No. 12.

7 IT IS FURTHER ORDERED that in the event Seven Canyons Water Company fails to meet
8 the conditions described herein within the time specified, then the extension of its Certificate of
9 Convenience and Necessity shall be deemed to be denied, without further Order of the Arizona
10 Corporation Commission.

11 IT IS FURTHER ORDERED that in the event Seven Canyons Water Treatment Company
12 fails to meet the conditions described herein within the time specified, then the extension of its
13 Certificate of Convenience and Necessity shall be deemed to be denied, without further Order of the
14 Arizona Corporation Commission.

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1 IT IS FURTHER ORDERED that the Curtailment Tariff filed by Seven Canyons Water
2 Company is approved.

3 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
5
6

7 CHAIRMAN COMMISSIONER COMMISSIONER

8
9 COMMISSIONER COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
11 Secretary of the Arizona Corporation Commission, have
12 hereunto set my hand and caused the official seal of the
13 Commission to be affixed at the Capitol, in the City of Phoenix,
14 this ____ day of _____, 2003.

15 _____
16 BRIAN C. McNEIL
17 EXECUTIVE SECRETARY

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1 SERVICE LIST FOR: SEVEN CANYONS WATER COMPANY AND
2 SEVEN CANYONS WATER TREATMENT COMPANY

3 DOCKET NOS.: W-03388A-03-0150 and SW-03389A-03-0150

4 Patrick Black
5 FENNEMORE CRAIG
6 3003 North Central Avenue, Ste. 2600
7 Phoenix, AZ 85012-2913
8 Attorneys for Seven Canyons

9 Christopher Kempsey, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Ernest G. Johnson, Director
15 Utilities Division
16 ARIZONA CORPORATION COMMISSION
17 1200 West Washington Street
18 Phoenix, Arizona 85007
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(Se

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s, Unit II)

A parcel lying in the North
of the Gila and Salt River B
particularly described as fol



ownship 18 North, Range 5 East
County, Arizona and more

The East half of the Northeast quarter of the Northwest quarter of the Northeast quarter;

The Northeast quarter of the Southeast quarter of the Northwest quarter of the Northeast quarter;

The Northwest quarter of the Northeast quarter of the Northeast quarter;

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Thence Northwest quarter of the Southwest quarter of the Northeast quarter of the Northeast quarter;

The Northeast quarter of the Northeast quarter of the Southeast quarter of the Northeast quarter of said Section 27,

ALSO described as follows:

All that portion of the Northeast quarter of Section 27, Township 18 North, Range 5 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the Northeast corner of Section 27;

Thence South $88^{\circ}49'40''$ West, 665.78 feet (record 605.84 feet), to a 3/4 inch iron pipe, the TRUE POINT OF BEGINNING.

Thence South $88^{\circ}50'40''$ West, 998.71 feet (record South $88^{\circ}49'40''$ West, 998.76 feet) to a found 1/2 inch iron pipe;

Thence South 00°05'44" East, 992.00 feet (record South 00°04'00" East, 992.48 feet) to a found 1/2 inch iron pipe;

Thence North 89°06'18" East, 665.00 feet (record North 89°04'25" East, 665.44 feet) to a found 3/4 inch iron pipe;

Thence South 00°03'38" East, 331.62 feet (record South 00°05'52" East, 331.75 feet) to a found 1/2 inch iron pipe;

Thence North 89°11'07" East, 665.84 feet (record North 89°09'20" East, 665.30 feet) to a found 1/2 inch iron pipe;

Thence South 00°04'37" East, 332.46 feet (record South 00°04'37" East, 332.75 feet) to a found 1 inch iron pipe;

Thence North 89°14'15" East, 332.65 feet (record North 89°14'15" East, 332.58 feet) to a found 1/4 inch iron pipe;

Thence North 00°04'00" West, 666.54 feet (record North 00°04'00" East, 666.42 feet) to a found 1 inch iron pipe;

Thence South 89°04'25" West, 332.94 feet (record South 89°04'25" West, 332.72 feet) to a set 5/8 inch rebar and cap marked LS 7908;

Thence North 00°04'00" West, 666.10 feet (record North 00°04'00" West, 665.50 feet) to a found 1/2 inch iron pipe;

Thence South 88°49'32" West, 332.67 feet (record South 88°54'35" West, 332.86 feet) to a found 1 inch iron pipe;

Thence North 00°02'14" West, 332.00 feet (record North 00°05'15" West, 332.25 feet) to a found 3/4 inch iron pipe, the TRUE POINT OF BEGINNING.

Containing 38.02 Acres, more or less.